

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SEDAKA DAMON BETTS,)	
)	
Petitioner,)	
)	
vs.)	No. 4:13 CV 2131 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on the motion and amended motion of Petitioner Sedaka Damon Betts under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence by a person in federal custody. Petitioner pled guilty to being a felon in possession of a firearm in violation of Title 18 U.S.C. § 922(g) on April 19, 2012. On October 19, 2012, Petitioner was sentenced to a term of 90 months imprisonment with two years of supervised release.

In his motions for post-conviction relief, Petitioner alleges that he received ineffective assistance of counsel when his trial counsel failed to file a notice of appeal as requested pursuant to Federal Rules of Appellate Procedure Rule 4(A)(b). Petitioner asks me to vacate his sentence and resentence him so that he may file a notice of appeal.

Petitioner also alleges that his sentence was unconstitutional because the Assistant United States Attorney failed to file a motion for a reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure as promised and that counsel was ineffective for failing to challenge the Assistant United States Attorney's failure to file the 35(b) motion.

Respondent concedes that Petitioner was denied effective assistance of trial counsel because his trial counsel failed to file a notice of appeal upon Petitioner's request, and requests

that I grant Petitioner's motion for post-conviction relief with respect to only that ground.

Respondent requests that I deny as moot without prejudice the remaining grounds in Petitioner's motion for post-conviction relief. *See* [#21].

Both parties consent to Petitioner's request to be resentenced so that he may file a timely notice of appeal. Additionally, counsel for Petitioner represents that Petitioner has advised that he does not need to be present at any resentencing hearing.

Based on the parties' consent and my review of the record, including the Affidavit of Petitioner's trial counsel, *see* [#20-1], I will grant Petitioner's motion and amended motion for post-conviction relief with regards to Petitioner's claim that he received ineffective assistance of counsel and the right to appeal based on trial counsel's failure to file a timely notice of appeal as requested. Petitioner will be resentenced and may file a notice of appeal then, if desired. I will deny as moot without prejudice the remaining grounds in Petitioner's motion.

The resentencing is set for **September 29, 2016 at 2:00 p.m.** Before the resentencing takes place, however, I will require the parties to file any stipulations as to the term of imprisonment to which Petitioner should be resentenced. Petitioner shall also file an affidavit indicating whether he consents to the stipulated-to term of imprisonment and to being absent from the resentencing hearing.

Accordingly,

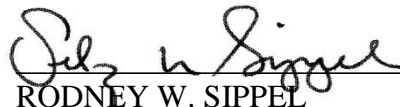
IT IS HEREBY ORDERED that the motion #[1] and amended motion #[19] of Sedaka Damon Betts to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 are **GRANTED** in part and **DENIED** in part as moot without prejudice. The motions are granted only with regards to Petitioner's claim that he received ineffective assistance of counsel and the

right to appeal based on trial counsel's failure to file a timely notice of appeal as requested. All remaining grounds in Petitioner's motion are denied as moot without prejudice.

IT IS FURTHER ORDERED that the parties shall file any stipulations as to the term of imprisonment to which Petitioner should be resentenced, and Petitioner shall file an affidavit indicating whether he consents to the stipulated-to term of imprisonment and to being absent from the resentencing hearing, by **no later than September 23, 2016**.

IT IS FURTHER ORDERED that a Resentencing Hearing is set for **Thursday, September 29, 2016 at 2:00 p.m.** in Courtroom 16-South.

IT IS FURTHER ORDERED that the Clerk of the Court shall file a copy of this Memorandum and Order in the criminal case *United States v. Sedaka Damon Betts* 4:11 CR 521 RWS.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 27th day of June, 2016.